

SENATE BILL No. 132

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-5-15; IC 25-34.1-6-2.5; IC 32-30-10.5-8; IC 32-30.1; IC 24-5.5.

Synopsis: Mortgage rescue fraud. Amends the law concerning the disclosures that a credit services organization must provide to a buyer to reflect changes in the federal Fair Credit Reporting Act concerning the circumstances under which a consumer is entitled to a consumer report without charge from a consumer reporting agency. Moves the statute concerning mortgage rescue fraud from the Indiana Code title concerning trade regulation to the title concerning property. Makes conforming changes to cross-references. Combines two separate Indiana Code provisions concerning the presuit notice required in residential foreclosure proceedings into one section, and specifies that the notice shall be sent by certified mail. Specifies that the statute concerning mortgage rescue fraud applies only to a foreclosure proceeding concerning residential real property that is located in Indiana and to which a homeowner holds record title at the time the proceeding is initiated. Removes an incorrect cross-reference in the statute concerning real estate brokers and salespersons. Repeals the existing statute concerning mortgage rescue fraud.

Effective: July 1, 2010.

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January 5, 2010, read first time and referred to Committee on Insurance and Financial Institutions.

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Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

SENATE BILL No. 132

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-5-15-6 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 6. Before executing a
3 contract or agreement with a buyer or receiving money or other
4 valuable consideration, a credit services organization must provide the
5 buyer with a written statement that contains the following:

6 (1) A complete and detailed description of the services to be
7 performed by the credit services organization for the buyer and
8 the total cost of the services.

9 (2) A statement explaining the buyer's right to proceed against the
10 bond or surety account required under section 8 of this chapter.

11 (3) The name and address of the:

12 (A) surety company that issued a bond; or

13 (B) depository and the trustee of a surety account and the
14 account number of the surety account;
15 required under section 8 of this chapter.

16 (4) A complete and accurate statement of the buyer's right to
17 review any file on the buyer maintained by a consumer reporting



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agency as provided under the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

(5) A statement that the buyer's file is available for review:

(A) at no charge ~~on request made to the consumer reporting agency within thirty (30) days after the date of receipt of a notice that credit has been denied;~~ **at the times and under the circumstances set forth in 15 U.S.C. 1681j;** and

(B) for a minimal charge at any other time **as provided by 15 U.S.C. 1681j(f).**

(6) A complete and accurate statement of the buyer's right to dispute the completeness or accuracy of an item contained in a file on the buyer maintained by a consumer reporting agency.

(7) A statement that accurate information cannot be permanently removed from the files of a consumer reporting agency.

(8) A complete and accurate statement indicating when consumer information becomes obsolete and when consumer reporting agencies are prevented from issuing reports containing obsolete information.

(9) A complete and accurate statement of the availability of nonprofit credit counseling services.

SECTION 2. IC 24-5-15-7, AS AMENDED BY P.L.209-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 7. (a) Except as provided in subsection (d), a contract between a consumer and a credit services organization concerning the purchase of the services of the credit services organization must be in writing, be dated and signed by both the consumer and the credit services organization, and include all of the following:

(1) A statement in at least 10 point boldface type in immediate proximity to the space reserved for the signature of the buyer that reads:

"You, the buyer, may cancel this contract at any time before midnight of the third business day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right."

(2) The terms and conditions of payment, including the total amount of all payments to be made by the buyer to the credit services organization or to another person.

(3) A complete and detailed description of the services to be performed and the results to be achieved by the credit services organization for or on behalf of the buyer, including all guarantees and all promises of full or partial refunds and a list of

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the adverse information appearing on the consumer's credit report that the credit services organization expects to have modified and the estimated date by which each modification will occur.

(4) The principal business address of the credit services organization and the name and address of the credit services organization's agent in Indiana authorized to receive service of process.

(b) A contract shall be accompanied by two (2) copies of a form captioned "NOTICE OF CANCELLATION" attached to the contract and that contains the following statement in at least 10 point boldface type:

NOTICE OF CANCELLATION

You may cancel this contract, without any penalty or obligation, at any time before midnight of the third business day after the date the contract is signed.

If you cancel, any payment made by you under this contract will be returned within ten days following receipt by the seller of your cancellation notice, or any other written notice, to

(name of seller)

(address of seller) (place of business)
not later than midnight _____
(date)

"I hereby cancel this transaction". _____
(date)

(buyer's signature)

(c) A credit services organization shall give a copy of the completed contract and all other documents required by the credit services organization to the buyer at the time the contract and the documents are signed.

(d) If a contract is subject to this chapter and to:

(1) IC 24-5.5 (before its repeal on July 1, 2010); or

(2) IC 32-30.1;

IC 24-5.5-4 (before its repeal on July 1, 2010) or IC 32-30.1-3, as appropriate, applies to the contract.

SECTION 3. IC 25-34.1-6-2.5, AS ADDED BY P.L.105-2009, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2.5. (a) A violation of:

(1) IC 24-5-15; or

(2) IC 24-5.5 (before its repeal on July 1, 2010); or

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(3) IC 32-30.1;

by a person licensed or required to be licensed under this article is a violation of this article.

(b) A person who commits a violation described in subsection (a) commits a Class A infraction and is subject to:

(1) the enforcement procedures described in section 2 of this chapter; and

(2) any sanction that may be imposed by the commission under IC 25-1-11-12. ~~for an act described in IC 25-1-11-11.~~

SECTION 4. IC 32-30-10.5-8, AS ADDED BY P.L.105-2009, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 8. (a) This section applies to a foreclosure action that is filed after June 30, 2009. Except as provided in subsection (e) and section 10(g) of this chapter, not later than thirty (30) days before a creditor files an action for foreclosure, the creditor shall send to the debtor by certified mail a presuit notice on a form prescribed by the Indiana housing and community development authority created by IC 5-20-1-3. ~~In prescribing the form required by this section, the Indiana housing and community development authority shall include in the notice the statement set forth in IC 24-5.5-3-1.~~ In addition, The notice required by this subsection must:

(1) inform the debtor that:

(A) the debtor is in default; and

(B) the debtor is encouraged to obtain assistance from a mortgage foreclosure counselor; ~~and~~

(2) provide the contact information for the Indiana Foreclosure Prevention Network; **and**

(3) include the following statement printed in at least 14 point boldface type:

"NOTICE REQUIRED BY STATE LAW

Mortgage foreclosure is a complex process. People may approach you about "saving" your home. You should be careful about any such promises. There are government agencies and nonprofit organizations you may contact for helpful information about the foreclosure process. For the name and telephone number of an organization near you, please call the Indiana housing and community development authority."

(b) The notice required by subsection (a) shall be sent to:

(1) the address of the mortgaged property; or

(2) the last known mailing address of the debtor if the creditor's records indicate that the mailing address of the debtor is other

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than the address of the mortgaged property.
 If the creditor provides evidence that the notice required by subsection (a) was sent by certified mail, return receipt requested, and as prescribed by this subsection, it is not necessary that the debtor accept receipt of the notice for an action to proceed as allowed under this chapter.

(c) Except as provided in subsection (e) and section 10(g) of this chapter, if a creditor files an action to foreclose a mortgage, the creditor shall include with the complaint served on the debtor a notice that informs the debtor of the debtor's right to participate in a settlement conference. The notice must be in a form prescribed by the Indiana housing and community development authority created by IC 5-20-1-3. The notice must inform the debtor that the debtor may schedule a settlement conference by notifying the court, not later than thirty (30) days after the notice is served, of the debtor's intent to participate in a settlement conference.

(d) In a foreclosure action filed under IC 32-30-10-3 after June 30, 2009, the creditor shall attach to the complaint filed with the court a copy of the notices sent to the debtor under subsections (a) and (c).

(e) A creditor is not required to send the notices described in this section if:

- (1) the loan is secured by a dwelling that is not the debtor's primary residence;
- (2) the loan has been the subject of a prior foreclosure prevention agreement under this chapter and the debtor has defaulted with respect to the terms of that foreclosure prevention agreement; or
- (3) bankruptcy law prohibits the creditor from participating in a settlement conference under this chapter with respect to the loan.

SECTION 5. IC 32-30.1 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]:

ARTICLE 30.1. MORTGAGE RESCUE FRAUD

Chapter 1. Application

Sec. 1. This article does not apply to the following:

- (1) A person organized or chartered under the laws of this state, any other state, or the United States that relate to a bank, a trust company, a savings association, a savings bank, a credit union, or an industrial loan and investment company.
- (2) The Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a Federal Home Loan Bank.
- (3) A department or agency of the United States or of Indiana.

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(4) A person that is servicing or enforcing a loan that the person owns.

(5) A person that is servicing a loan:

(A) for a person described in subdivisions (1) through (4); or

(B) insured by the Department of Housing and Urban Development or guaranteed by the Veterans Administration.

(6) An attorney licensed to practice law in Indiana who is representing a mortgagor.

Sec. 2. This article applies only to a foreclosure proceeding concerning residential real property that is located in Indiana and to which a homeowner holds record title at the time the foreclosure proceeding is initiated.

Chapter 2. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Foreclosure consultant" means a person who, directly or indirectly, makes a solicitation, a representation, or an offer to a homeowner to perform, with or without compensation, any service that the person represents:

(1) will prevent or postpone the initiation of a foreclosure proceeding, or reverse the effect of a foreclosure proceeding;

(2) will allow the homeowner to become a lessee or renter in the homeowner's residence during or after a foreclosure proceeding; or

(3) will allow the homeowner to have an option to repurchase the homeowner's residence after a foreclosure proceeding.

Sec. 3. "Foreclosure purchaser" means a person who purchases real property in a foreclosure proceeding.

Sec. 4. "Foreclosure reconveyance" means a transaction involving:

(1) the transfer of an interest in real property by a homeowner to a person during or incident to a proposed foreclosure proceeding, either by:

(A) transfer of an interest from the homeowner to the person; or

(B) creation of a mortgage, trust, or other lien or encumbrance during the foreclosure process;

that allows the person to obtain legal or equitable title to all or part of the real property; and

(2) the subsequent conveyance, or promise of subsequent

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conveyance, of an interest back to the homeowner by the person or the person's agent that allows the homeowner to possess the real property following the completion of the foreclosure proceeding.

Sec. 5. "Formal settlement" means a face-to-face meeting with a homeowner to complete final documents incident to:

- (1) the sale or transfer of real property; or
- (2) the creation of a mortgage or equitable interest in real property;

conducted by a person who is not employed by or an affiliate of the foreclosure purchaser.

Sec. 6. "Homeowner" means a person who holds record title to residential real property as of the date on which:

- (1) a contract with a foreclosure consultant; or
- (2) a foreclosure reconveyance agreement;

with respect to the residential real property is entered into.

Chapter 3. Rescission of Foreclosure Reconveyance Agreements and Contracts With Foreclosure Consultants

Sec. 1. In addition to any other right under law to cancel or rescind a contract, a homeowner may rescind:

- (1) a contract with a foreclosure consultant at any time before midnight of the seventh business day after the date the contract is signed; and
- (2) a foreclosure reconveyance agreement at any time before midnight of the seventh business day after the homeowner's transfer of the interest in the real property that is the subject of the agreement, as described in IC 32-30.1-2-4(1).

Sec. 2. A homeowner effectively rescinds a contract with a foreclosure consultant if the homeowner gives written notice of a rescission to the foreclosure consultant by one (1) of the following:

- (1) Mailing the rescission to the address specified in the contract.
- (2) Sending the rescission through any facsimile number or electronic mail address identified in the contract or in any other material provided to the homeowner by the foreclosure consultant.

Sec. 3. (a) If a notice of rescission under this chapter is:

- (1) sent by mail; and
- (2) properly addressed, with postage prepaid;

the rescission is effective three (3) days after the notice is deposited in the U.S. mail.

(b) A homeowner is not required to give notice of rescission in

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the form required under the contract if the form required under the contract is inconsistent with the requirements set forth in this chapter.

Sec. 4. (a) If a homeowner rescinds a foreclosure reconveyance agreement or a contract with a foreclosure consultant, the homeowner shall, not later than thirty (30) days after the date of rescission, repay any amounts paid or advanced by:

(1) the foreclosure consultant or the foreclosure consultant's agent under the terms of the foreclosure consulting contract; or

(2) a person under a foreclosure reconveyance agreement.

(b) A rescission by a homeowner under this chapter is void if the payments required under this section are not made within the time set forth in subsection (a).

Sec. 5. If a homeowner rescinds a contract with a foreclosure consultant, not more than ten (10) days after the effective date of the rescission, the foreclosure consultant shall return to the homeowner any payments made by the homeowner, less any amounts for actual services rendered.

Chapter 4. Limitations on Foreclosure Consultants and Foreclosure Reconveyances

Sec. 1. For purposes of this chapter, there is a rebuttable presumption that:

(1) a homeowner has a reasonable ability to pay for a subsequent reconveyance of real property if the homeowner's payments for primary housing expenses and regular principal and interest payments on other personal debt, on a monthly basis, do not exceed sixty percent (60%) of the homeowner's monthly gross income; and

(2) the foreclosure purchaser has not verified reasonable payment ability if the foreclosure purchaser has not obtained documents other than a statement by the homeowner of assets, liability, and income.

Sec. 2. In addition to any prohibitions that apply under IC 24-5-15-1 through IC 24-5-15-8, a foreclosure consultant may not:

(1) enter into or attempt to enter into a foreclosure consultant contract with a homeowner unless the foreclosure consultant first provides the homeowner written notice of the homeowner's rights under this article;

(2) demand or receive compensation until after the foreclosure consultant has fully performed all services the

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foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform, unless the foreclosure consultant complies with the security requirements under IC 24-5-15-8;

(3) demand or receive a fee, interest, or any other compensation that exceeds eight percent (8%) per year of the amount of any loan that the foreclosure consultant makes to the homeowner;

(4) take a wage assignment, a lien of any type on real or personal property, or any other security to secure the payment of compensation;

(5) receive consideration from a third party in connection with foreclosure consulting services provided to a homeowner unless the consideration is first fully disclosed in writing to the homeowner;

(6) acquire any interest, directly or indirectly, in residential real property in foreclosure from a homeowner with whom the foreclosure consultant has contracted; or

(7) except to inspect documents as provided by law, take any power of attorney from a homeowner for any purpose.

Sec. 3. A foreclosure purchaser may not enter into or attempt to enter into a foreclosure reconveyance agreement with a homeowner unless:

(1) the foreclosure purchaser verifies and demonstrates that the homeowner has or will have a reasonable ability to:

(A) pay for the subsequent reconveyance of the real property back to the homeowner on completion of the terms of the foreclosure conveyance; or

(B) if the foreclosure conveyance provides for a lease with an option to repurchase the real property, make the lease payment and repurchase the real property within the period of the option to repurchase;

(2) the foreclosure purchaser provides the homeowner written notice of the homeowner's rights under this article;

(3) the foreclosure purchaser and the homeowner complete a formal settlement before any transfer of interest in the affected property; and

(4) the foreclosure purchaser complies with the security requirements under IC 24-5-15-8.

Sec. 4. A foreclosure purchaser shall:

(1) ensure that title to real property has been reconveyed to the homeowner in a timely manner if the terms of a

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foreclosure reconveyance agreement require a reconveyance;
 or
 (2) if the real property subject to a foreclosure reconveyance agreement is sold within eighteen (18) months after entering into the foreclosure reconveyance agreement, make payment to the homeowner not later than ninety (90) days after the resale of the real property in an amount equal to at least sixty-six percent (66%) of the net proceeds from the resale of the real property.

Sec. 5. A foreclosure purchaser may not:

- (1) enter into repurchase or lease terms as part of the foreclosure reconveyance that are unfair or commercially unreasonable or engage in any other unfair conduct;
- (2) represent, directly or indirectly, that the:
 - (A) foreclosure purchaser is acting:
 - (i) as an adviser or a consultant; or
 - (ii) in any other manner;
 on behalf of the homeowner;
 - (B) foreclosure purchaser is assisting the homeowner to save the residential real property; or
 - (C) foreclosure purchaser is assisting the homeowner in preventing a foreclosure if the result of the transaction is that the homeowner will not complete a redemption of the real property; or
- (3) until the homeowner's right to rescind or cancel the foreclosure reconveyance agreement has expired:
 - (A) record any document, including an instrument or conveyance, signed by the homeowner; or
 - (B) transfer to a third party or encumber, or purport to transfer to a third party or encumber, any interest in the residential real property in foreclosure.

Sec. 6. A foreclosure purchaser shall make a detailed accounting, on a form prescribed by the attorney general, of the basis for the amount of payment made to a homeowner of real property resold within eighteen (18) months after entering into a foreclosure reconveyance agreement.

Sec. 7. A foreclosure consultant shall retain:

- (1) the foreclosure consultant contract; and
 - (2) all other records and documents related to services performed on behalf of a homeowner;
- for at least three (3) years after the termination or conclusion of the foreclosure consultant contract entered into by the foreclosure

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1 consultant and the homeowner.

2 **Chapter 5. Enforcement**

3 **Sec. 1. A person who violates this article commits a deceptive act**
 4 **that is actionable by the attorney general under IC 24-5-0.5-4 and**
 5 **is subject to the penalties and remedies available to the attorney**
 6 **general under IC 24-5-0.5.**

7 **Sec. 2. (a) A homeowner may bring an action against a person**
 8 **for damages incurred as a result of a violation of this article.**

9 **(b) A homeowner who:**

10 **(1) brings an action under this section; and**

11 **(2) is awarded damages;**

12 **may seek reasonable attorney's fees.**

13 **Sec. 3. (a) A court may award attorney's fees under section 2(b)**
 14 **of this chapter.**

15 **(b) If the court finds that a person willfully or knowingly**
 16 **violated this article, the court may award damages equal to three**
 17 **(3) times the amount of actual damages.**

18 **Sec. 4. (a) The Indiana housing and community development**
 19 **authority shall maintain a list of nonprofit organizations that:**

20 **(1) offer counseling or advice to homeowners:**

21 **(A) in or facing foreclosure; or**

22 **(B) who have defaulted or may default on a home loan; and**

23 **(2) do not contract for services with for-profit lenders or**
 24 **foreclosure purchasers.**

25 **(b) The Indiana housing and community development authority**
 26 **shall provide the names and telephone numbers of the**
 27 **organizations described in subsection (a) to a homeowner upon**
 28 **request.**

29 **Sec. 5. The attorney general may adopt rules under IC 4-22-2**
 30 **necessary to implement this article or IC 24-5.5 (before its repeal**
 31 **on July 1, 2010).**

32 **Sec. 6. Except as provided in IC 24-5-15-7(d), this article may**
 33 **not be construed to preempt IC 24-5-15-1 through IC 24-5-15-11.**

34 **SECTION 6. IC 24-5.5 IS REPEALED [EFFECTIVE JULY 1,**
 35 **2010].**

36 **SECTION 7. An emergency is declared for this act.**

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